

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

**CIVIL ACTION NO. 05-11803-MLW**

**SHENIA DANCY-STEWART as  
Administratrix of the Estate of  
EVELINE BARROS-CEPEDA,  
Plaintiff,**

**v.**

**THOMAS TAYLOR, Jr., and the  
CITY OF BOSTON,  
Defendants.**

**DEFENDANTS, CITY OF BOSTON AND THOMAS TAYLOR'S OPPOSITION TO  
PLAINTIFF'S EMERGENCY MOTION FOR CLARIFICATION**

The Defendants, City of Boston and Thomas Taylor, Jr., hereby oppose Plaintiff's Emergency Motion for Clarification and their request to conduct further written discovery outside the scope of this Court's December 20, 2007 Order. As grounds for their opposition, the Defendants state as follows:

1. The Plaintiff served the Defendants with interrogatory requests and requests for production of documents on December 27, 2007, well past the November 30, 2007 discovery deadline.
2. Just six days prior to her service, on December 19, 2007, this Court had held a status conference to discuss the remaining discovery in this case.
3. As of the date of that status conference, the Plaintiff had not noticed any depositions, served any interrogatories on any party, or requested the production of any documents beyond Defendants' Rule 26.1 auto-disclosures.
4. Moreover, during the status conference, Plaintiff made no mention of her intent to serve written discovery on the Defendants. See Exhibit A, Transcript of the December 19, 2007 Status Conference.<sup>1</sup>

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<sup>1</sup> The Defendants hereby attach the transcript of the December 20, 2007 status conference as the Plaintiff failed to request this transcript and include it with her Emergency Motion for Clarification.

5. In fact, the only written discovery discussed during the conference was the requests the Defendants served upon the Plaintiff prior to the expiration of the discovery period.<sup>2</sup>
6. Following this status conference, this Court issued an order on December 20, 2007 addressing the schedule for remaining discovery.
7. Nowhere in that Order does the Court permit the Plaintiff to serve written discovery upon the Defendants.
8. Given the developments of the status conference and the subsequent December 20, 2007 Order, the Defendants contend that Plaintiff's request for written discovery from the Defendants is impermissible.
9. The Defendants also oppose Plaintiff's contention that its discovery requests can be easily produced. Plaintiff's written discovery requests are not only objectionable but also include irrelevant, burdensome and voluminous document production, including the complete investigatory files of nineteen (19) prior shooting incidents involving the Boston Police Department that span the course of multiple decades. Moreover, any interrogatory requests of Defendant Thomas Taylor are irrelevant in light of his upcoming deposition scheduled for January 30, 2008.

For all of the foregoing reasons, the Defendants respectfully request that the Defendants deny Plaintiff's Emergency Motion for Clarification and their request to conduct further written discovery.

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<sup>2</sup> The Plaintiff disingenuously states in her Emergency Motion for Clarification that she was required to produce the discovery responses within a two week period when in fact, she ultimately received a two week extension from the Court. The Defendants served discovery requests upon the Plaintiff on November 24, 2007, thereby requiring the Plaintiff's response by December 24, 2007. With the Court's Order, Plaintiff was given additional time and was permitted to produce them by January 3, 2008.

Respectfully submitted,  
DEFENDANTS, CITY OF BOSTON  
AND THOMAS TAYLOR

By their attorneys:

/s/ Helen G. Litsas

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**CERTIFICATE OF SERVICE**

I, Helen G. Litsas, hereby certify that on this date I served a copy of the foregoing document upon the Plaintiff via her counsel, Andrew Stockwell-Alpert, Esq., by electronic filing and first class mail.

1/16/08  
Date

/s/ Helen G. Litsas  
Helen G. Litsas

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MASSACHUSETTS

3 No. 1:05-cv-11803-MLW

4  
5 SHENIA DANCY-STEWART, et al,  
6 Plaintiffs

7 vs.

8  
9 THOMAS TAYLOR, JR., et al,  
10 Defendants

11  
12 \*\*\*\*\*

13  
14 For Hearing Before:  
15 Chief Judge Mark L. Wolf

16 Lobby Conference

17  
18 United States District Court  
19 District of Massachusetts (Boston)  
20 One Courthouse Way  
21 Boston, Massachusetts 02210  
22 December 19, 2007

23 \*\*\*\*\*

24 REPORTER: RICHARD H. ROMANOW, RPR  
25 Official Court Reporter  
United States District Court  
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1 P R O C E E D I N G S

2 (Lobby, 1:00 p.m.)

3 THE COURT: All right. Why don't you tell me  
4 or remind me who you are and who you represent.

5 MR. STOCKWELL-ALPERT: Good afternoon. I'm  
6 attorney Andrew Stockwell-Alpert and I represent Shenja  
7 Dancy-Stewart who is the plaintiff administrator of the  
8 estate.

9 MR. McCAULL: Your Honor, James McCaull. Same  
10 as Mr. Alpert. My name is not on the complaint. I  
11 don't think I filed an appearance yet, but I will. I  
12 shall.

13 MR. DeMIRANDA: Adelio DeMiranda, your Honor,  
14 and I represent Shenja Dancy-Stewart.

15 THE COURT: How do you spell your last name?

16 MR. DeMIRANDA: D-E-M-I-R-A-N-D-A.

17 THE COURT: Okay.

18 MR. KEEFE: The same of William Keefe, for the  
19 record, for the plaintiff, and along with Mr. Stockwell-  
20 Alpert. I have my appearance in.

21 MS. LITSAS: Good afternoon, your Honor. I'm  
22 Helen Litsas. I represent the two defendants in this  
23 action, the City of Boston and Thomas Taylor.

24 MR. OUELLETTE: Evan Ouellette, and my last  
25 name is spelled O-U-E-L-L-E-T-T-E, and I also represent

1 the two defendants, the City of Boston and Thomas  
2 Taylor.

3 THE COURT: All right. Well, you've got a lot  
4 of lawyers, but you haven't made the progress you told  
5 me you were going to make when we had the scheduling  
6 conference in August of 2006. And despite the fact the  
7 plaintiffs have got four lawyers, you didn't file the  
8 report that was due on December 14th. So -- from based  
9 on what I read, I don't understand why I would extend  
10 the schedule nine months and maybe I shouldn't extend it  
11 at all, because it looks like some of these depositions  
12 you had trouble getting weren't noticed until November  
13 and you find out the deponent's in jail.

14 But what's going on? You know, cases are hard and  
15 sometimes things happen, but you've got to work  
16 diligently at them. And, you know, with six lawyers  
17 representing three parties, this should be doable.

18 MR. STOCKWELL-ALPERT: I guess I should speak  
19 first, because I'm probably the only one you've had any  
20 consistent contact with and I was the one who came in  
21 for the scheduling conference.

22 There have been a lot of -- I can say a lot of  
23 things, but nothing is really an excuse or a  
24 justification. Um, there has been an awful lot of --

25 We need to start out with the fact that we're not

1 really all six representing the same entity, there are  
2 three of us representing one of the beneficiaries and  
3 two representing the other, but you can't represent  
4 beneficiaries. There are all six representing the  
5 estate. And the reason that's an issue is --

6 THE COURT: You mean the four of you. They  
7 represent the defendants.

8 MR. STOCKWELL-ALPERT: Oh, I'm sorry. That's  
9 right. There are two others who aren't here.

10 THE COURT: Oh, there are two others who  
11 aren't here?

12 MR. STOCKWELL-ALPERT: Right.

13 THE COURT: Where are they?

14 MR. STOCKWELL-ALPERT: Well, Manuel Pires, his  
15 mother died suddenly last Friday after a six-month bout  
16 with pancreatic cancer and so he's been taking the week  
17 off and the funeral is tomorrow and so he's kind of  
18 preoccupied right now.

19 And that's one of the things that has been a  
20 problem with me, by the way, is that as I told you way  
21 back when, that I'm legally blind, and so when I do a  
22 lot of this discovery, I obviously rely on people around  
23 me to help me with the reading and sorting things out  
24 and doing some of the leg-work. The communication all  
25 around has been somewhat complicated by two factors.



1           There's kind of -- and this is utterly irrelevant  
2           to you from the standpoint of moving the case, but  
3           there's kind of a split in the beneficiaries with regard  
4           to what they consider to be the value of each of their  
5           cases and how they're going to be best represented. And  
6           so as a result, although we came in originally on one --  
7           you know, representing a particular individual, Carlos  
8           Cepeda, who was the other beneficiary, he saw fit to  
9           basically retain other counsel and these two individuals  
10          represent him. So --

11           THE COURT: Well, there's only one named  
12          plaintiff, I think.

13           MR. STOCKWELL-ALPERT: Right. Exactly.  
14          There's one plaintiff. The plaintiff is the  
15          administrator who obviously has to bring the case on  
16          behalf of the estate. But there's two different  
17          beneficiaries who are having problems coordinating what  
18          they think the lawyers are going to do and therefore  
19          he's going to basically bring somebody else in. You're  
20          not going to hear from six lawyers at the trial. That's  
21          clearly not going to happen.

22           THE COURT: Of course I'm not. There's only  
23          one plaintiff.

24           MR. STOCKWELL-ALPERT: Well, things have  
25          gotten extremely complicated and I can just cut to the

1 chase and tell the Court that all that's gone on so far,  
2 and obviously this is little or no excuse as far as the  
3 Court is concerned, but what I can tell you is --

4 THE COURT: But let me ask you this, what have  
5 you done since August of 2006? Whose deposition have  
6 you taken? You haven't designated the experts. Are you  
7 going to have experts? Usually you do. Have you taken  
8 any depositions?

9 MS. LITSAS: Well, your Honor, the defendant  
10 has noticed all of the depositions thus far, but the  
11 plaintiffs have not noticed yet one deposition. We have  
12 noticed depositions maybe on 15 or 16 different  
13 occasions. Several of our deponents have failed to  
14 appear on numerous occasions.

15 THE COURT: Well, why didn't you ask the  
16 Magistrate Judge to give you an order compelling them to  
17 appear, if you want their deposition?

18 MS. LITSAS: Well, the problem has been that a  
19 couple of the witnesses that are involved -- that that  
20 isn't our intention. We have had some difficulty in  
21 locating them because some of the witnesses are part of  
22 a transient population.

23 Brima Wurie, we noticed him previously prior to  
24 the one he filed a motion to regarding his deposition  
25 while he's been incarcerated. The problem was that we

1 didn't know he was incarcerated at the time and so there  
2 was a long delay. We started noticing depositions over  
3 a year ago. The problem has been that we've discovered  
4 that one of the deponents was unfortunately deceased.  
5 Another problem has been difficulty in coordinating  
6 dates with plaintiffs' counsel because, from what I  
7 understood, there was some complications involving who  
8 was representing who, um, what was going on --

9 THE COURT: Well, there's only -- I mean, I  
10 understand the beneficiaries -- how do the beneficiaries  
11 have standing to participate in the depositions?  
12 There's one plaintiff, Ms. Dancy-Stewart. The  
13 beneficiaries can have lawyers, but how do they get to  
14 ask questions?

15 MR. STOCKWELL-ALPERT: We don't except there's  
16 cross-examination. We can't object but --

17 THE COURT: No, they don't have any standing  
18 to participate in the case. They can't ask questions.  
19 They can't -- they can testify. Am I missing  
20 something?

21 MR. KEEFE: No, your Honor, not at all.

22 THE COURT: So what you have to do -- I'm  
23 sorry. Go ahead.

24 MR. KEEFE: I think, to be fair to both sides,  
25 that we dragged our feet unnecessarily. You know, we

1 have maybe eight, nine witnesses who we're intending to  
2 notice forthwith --

3 MR. STOCKWELL-ALPERT: We need three months.

4 THE COURT: You need three months. But you  
5 have to do it.

6 MR. STOCKWELL-ALPERT: Three months.

7 THE COURT: I mean, I don't want to throw your  
8 case out because you've --

9 MR. STOCKWELL-ALPERT: We've talked about this  
10 between us and --

11 THE COURT: Let me finish. I'm trying to  
12 agree with you. See, I have a Northeastern law student  
13 and I want to teach her that when you're about to win,  
14 that's when you stop talking.

15 (Laughter.)

16 THE COURT: Is three months enough?

17 MS. LITSAS: Well, your Honor, it depends on  
18 -- I've just been informed today, for the first time,  
19 that the plaintiffs intend to take now eight  
20 depositions. You know, we have noticed several  
21 depositions. What he would like is to finish those  
22 depositions that have been previously noticed and then  
23 the plaintiffs can schedule theirs. On this basis we  
24 would agree. I think it's only in a matter of  
25 fairness. We have been doing diligent discovery.

1 THE COURT: Well, that's fine. What  
2 depositions do you want?

3 MS. LITSAS: Well, there is Carlos Fernandes.  
4 Luis Carlvalho.

5 THE COURT: Can you spell that.

6 MS. LITSAS: Sure. It's C-A-R-L-V-A-L-H-O.

7 THE COURT: Go ahead.

8 MS. LITSAS: Brima Wurie. He's the one who's  
9 incarcerated.

10 THE COURT: I'm allowing your motion. There's  
11 no objection to it -- to take that?

12 MR. STOCKWELL-ALPERT: No.

13 MS. LITSAS: Diana Cepeda. Who are we  
14 missing? We're continuing Domingas DePina, who is the  
15 mother of the deceased. Her deposition had to be  
16 suspended because of childcare issues. So we'd like to  
17 continue with that. Um --

18 MR. OUELLETTE: The father.

19 MS. LITSAS: Carlos Cepeda.

20 MR. OUELLETTE: Ribaldo.

21 MS. LITSAS: I'm sorry. Gabriel Ribaldo, who  
22 is the stepfather.

23 THE COURT: So it's not Carlos Cepeda?

24 MS. LITSAS: Well, actually what we've done  
25 with Carlos Cepeda is we're asking him to produce some

1 documents and that's on Friday.

2 MR. OUELLETTE: His deposition was already  
3 taken.

4 MS. LITSAS: His deposition was already taken.  
5 He's just coming in for document production.

6 THE COURT: Okay.

7 MS. LITSAS: The other individual is Dana  
8 Grant.

9 THE COURT: Go ahead. Who else?

10 MS. LITSAS: James Nicholas. And Travo  
11 Carter. And Maria DaRosa, who has failed to appear now  
12 on two occasions.

13 THE COURT: Who is after Nicholas?

14 MS. LITSAS: Maria DaRosa.

15 THE COURT: I thought there was somebody else  
16 you mentioned.

17 MS. LITSAS: Travo Carter.

18 THE COURT: I have to get my rules. But  
19 ordinarily you don't get this many depositions anyway.

20 MR. STOCKWELL-ALPERT: I think you get ten.

21 MS. LITSAS: And that was one of the issues we  
22 were going to address today, if we could have your  
23 permission to depose beyond the ten? Because these are  
24 eyewitnesses and they're damages witnesses to --

25 THE COURT: Well, take a step back. Remind me

1 what happened. In other words, I'm refreshed somewhat  
2 by your report, which is just what you're supposed to  
3 do, except you have to single space your submissions  
4 under the rules or they're supposed to get sent back,  
5 which I have increasing appreciation for the importance  
6 of.

7 MS. LITSAS: Oh, I'm sorry, your Honor.

8 THE COURT: But --

9 MR. STOCKWELL-ALPERT: This is a police  
10 shooting case.

11 THE COURT: Right. There were some people in  
12 the car --

13 MR. STOCKWELL-ALPERT: Four people in the car.

14 THE COURT: And the rest of these people were  
15 witnesses?

16 MS. LITSAS: Yes, your Honor. There were five  
17 people in the car. The driver, Brima Wurie, and the  
18 front seat passenger was Carlos Fernandes. In the back  
19 seat of the car was Maria DaRosa, the decedent, Eveline  
20 Barros-Cepeda, and Luis Carlvalho. So those are  
21 individuals we are seeking to depose. There were two  
22 witnesses, Travo Carter and James Nicholas. Domingas  
23 DePina is the mother of the deceased. Gabriel Ribaldo  
24 is the --

25 THE COURT: And what's she going to testify

1 on, damages?

2 MS. LITSAS: According to Mr. Stockwell-  
3 Alpert, yes. Gabriel Ribaldo is the deceased's  
4 stepfather. He's also been listed in the other  
5 disclosures as a witness on damages.

6 MR. STOCKWELL-ALPERT: I don't plan to call  
7 him, by the way, Judge.

8 MS. LITSAS: And I believe Dana Grant is an  
9 investigator hired by Carlos Cepeda, the husband of the  
10 deceased, to conduct his own investigation regarding  
11 this incident. I think I've covered everybody. So each  
12 of these witnesses are certainly -- the majority are  
13 percipient witnesses, there's a small segment that are  
14 damages witnesses, and the remainder are also relevant  
15 because of any investigation that was conducted by the  
16 deceased's husband.

17 THE COURT: Now, who did you say you weren't  
18 going to call?

19 MR. STOCKWELL-ALPERT: I'm not going to call  
20 Gabriel, Domingas's husband.

21 MR. KEEFE: Ribaldo.

22 MR. STOCKWELL-ALPERT: He would not have  
23 anything to add to what Domingas would put in.

24 THE COURT: Okay. So do you want to drop him  
25 from the people you have to depose?



1 MR. OUELLETTE: He's the father of the  
2 diseased. I think he's one of the more important  
3 damages witnesses.

4 THE COURT: I think they're saying they're not  
5 going to call him as a witness. If they tell me that  
6 and then they try to call him, I'm going to say that  
7 "You can't call him because you represented that you  
8 weren't going to call him and as a result of that the  
9 deposition wasn't taken," and it will be in the  
10 transcript.

11 Do you still need or want to --

12 MS. LITSAS: Can we think about that, your  
13 Honor?

14 THE COURT: No, because I'm going to -- look,  
15 as soon as I let you out of my sight, if I don't give  
16 you very specific orders, this is going to go off track  
17 again. So I'm going to tell you who you can depose and  
18 who you can --

19 MS. LITSAS: Okay. If he's not going to call  
20 Gabriel Ribaldo, then we'll agree to not depose him.

21 THE COURT: Okay. We'll put that in the  
22 order. It's been represented that Gabriel Ribaldo will  
23 not be called by the plaintiff and therefore it's --  
24 therefore, in reliance on that representation, the  
25 defendants have agreed not to take Ribaldo's

1 deposition.

2 And how long do you think each of these  
3 depositions is going to take?

4 MS. LITSAS: Well, I believe that some of them  
5 may -- I've been informed that some of them may not last  
6 very long because two of the witnesses, Luis Carlvalho  
7 and Maria DaRosa, may, in fact, take their Fifth  
8 Amendment. So I've scheduled these depositions  
9 basically -- you know, I've scheduled two or three in  
10 one day, so I anticipate two or three hours. And  
11 Domingas DePina is the exception, of course, because she  
12 is essentially the witness for the -- on the damages  
13 case for the plaintiff.

14 THE COURT: All right. So you think you need  
15 how many days of depositions, about three or four?

16 MS. LITSAS: Well, I'd say maybe five days of  
17 depositions, just to be on the safe side, because James  
18 Nicholas, for example, is a New Hampshire resident, so  
19 we have to travel to New Hampshire to conduct his  
20 deposition.

21 THE COURT: Okay. I'm just trying to figure  
22 it out. And which of these people failed to appear in  
23 response to --

24 MS. LITSAS: To a subpoena?

25 THE COURT: Yes.

1 MS. LITSAS: Travo Carter. Carlos Fernandes.  
2 Luis Carlvalho. Maria DaRosa. And Brima Wurie,  
3 although we know he failed to appear because he was  
4 incarcerated.

5 MR. STOCKWELL-ALPERT: Your Honor --

6 THE COURT: Do you want to file a motion to  
7 compel and tell me what dates you want them to appear?

8 MS. LITSAS: Sure, I can do that.

9 THE COURT: How quickly can you do that?

10 MS. LITSAS: I can do that by the end of the  
11 week.

12 THE COURT: Okay, by 12:00 noon on Friday the  
13 21st.

14 Now, is there going to be any opposition to that?

15 MR. STOCKWELL-ALPERT: Yes, there would be an  
16 opposition to a couple of the depositions, but certainly  
17 not all of them.

18 THE COURT: Why?

19 MR. STOCKWELL-ALPERT: First of all, Luis  
20 Carlvalho and Maria DaRosa, I mean, they may well come  
21 in and take the Fifth.

22 THE COURT: Well -- and in a civil case,  
23 that's admissible.

24 MR. STOCKWELL-ALPERT: Right. Of course.  
25 These people went to the grand jury. They testified at

1 the grand jury. They gave statements to the police way  
2 back at the beginning. I don't see any relevance or any  
3 purpose for a deposition.

4 THE COURT: Do you plan to call them?

5 MR. STOCKWELL-ALPERT: No, absolutely not.

6 THE COURT: But they may want to call them.  
7 They can take their deposition. I mean, they just  
8 failed to appear, they didn't --

9 MR. STOCKWELL-ALPERT: Right.

10 THE COURT: -- they didn't move to quash.

11 Do you all got your calendars? Why don't you just  
12 put a week aside to do the depositions in January and  
13 then the defendant will have had her -- the defendants  
14 will have had their depositions and then we can talk  
15 about plaintiffs.

16 MS. LITSAS: That sounds excellent, your  
17 Honor.

18 (Pause.)

19 THE COURT: Mr. Keefe's looking at his  
20 schedule. I know he would like to be there, and I'm not  
21 saying he can't be there, but he doesn't represent a  
22 plaintiff as far as I know, so I'm not going to sculpt  
23 this around your schedule.

24 MR. KEEFE: No, no, we can make it, your  
25 Honor.

1 THE COURT: All right. It's going to take you  
2 a little -- okay. What week do you want?

3 MR. KEEFE: The week of the 28th.

4 THE COURT: Why put it off that far?

5 MR. STOCKWELL-ALPERT: I'm good with the week  
6 of the 14th. I think it's January 14th?

7 THE COURT: Yes, the 14th.

8 MR. STOCKWELL-ALPERT: And whatever I have to  
9 clear, I'll clear.

10 THE COURT: Okay.

11 MS. LITSAS: The week of the 14th works for  
12 me, your Honor.

13 THE COURT: All right. Well, you give me a  
14 motion and a proposed order, tell me when and where you  
15 want each of them to appear, and I'll enter the order,  
16 the week of the 14th.

17 MS. LITSAS: Excellent.

18 THE COURT: All right. And then who does the  
19 plaintiff want to depose?

20 MR. STOCKWELL-ALPERT: The plaintiff is going  
21 to depose Thomas Taylor, who is the person who shot, and  
22 there's officer --

23 MS. LITSAS: Paillant.

24 MR. STOCKWELL-ALPERT: Okay. Paillant. Who  
25 was the one who allegedly was hit by the vehicle. And

1 the two police officers -- and I have to go back and  
2 look at the incident report, but the two police officers  
3 who were following behind their vehicle at a slow rate  
4 of speed.

5 THE COURT: And what are their names?

6 MR. STOCKWELL-ALPERT: I don't recollect right  
7 now.

8 MR. OUELLETTE: Deb Flaherty and --

9 MS. LITSAS: Robert Conley.

10 MR. OUELLETTE: Right.

11 MR. STOCKWELL-ALPERT: Right. And we're going  
12 to depose the ballistics, the person who conducted the  
13 ballistics examination.

14 THE COURT: And who is that?

15 MR. STOCKWELL-ALPERT: I don't recollect. Do  
16 we have that?

17 MS. LITSAS: Sergeant Duggan or Lieutenant  
18 Harrington.

19 MR. STOCKWELL-ALPERT: Right.

20 THE COURT: Well, which one of them?

21 MR. STOCKWELL-ALPERT: Well, I'm going to have  
22 both of them because one of them actually oversaw the  
23 whole investigation, which was Sergeant Duggan, I  
24 believe. So we're going to be deposing the one who  
25 oversaw the whole weapons discharge investigation and

1 then the one who did the ballistics examination of how  
2 the bullets hit the car. And then we have a couple of  
3 basically document depositions. Apparently the injured  
4 officer filed a claim against the owner of the vehicle  
5 for personal injury and we are going to get that  
6 insurance file, okay, to find out what exactly was the  
7 injury.

8 THE COURT: What's the insurance company?

9 MR. STOCKWELL-ALPERT: Do you recall the  
10 insurance company?

11 MR. DeMIRANDA: I don't recollect right now.

12 MR. STOCKWELL-ALPERT: I mean, Manny Pires  
13 basically has that information.

14 MS. LITSAS: Your Honor, we would argue how  
15 that information is not relevant, the fact that he  
16 obtained Worker's Compensation.

17 THE COURT: No, but if he made statements to  
18 the insurance company, it would be relevant. They might  
19 be inconsistent with the deposition testimony.

20 MR. STOCKWELL-ALPERT: And, in fact, he filed  
21 a Worker's Comp. claim as well as a personal injury  
22 claim, and so we're really trying to get both of those  
23 files.

24 THE COURT: We're talking here about  
25 discovery. Whether he gets something admissible is a

1 different question.

2 MR. STOCKWELL-ALPERT: Right. And then  
3 there's also the hospital records because apparently he  
4 went to the hospital. So we're going to get the  
5 hospital records. So those are the three document  
6 depositions.

7 THE COURT: Well, the insurance company, the  
8 hospital, and what's the third?

9 MR. STOCKWELL-ALPERT: Worker's Comp. The  
10 insurance company is auto insurance.

11 THE COURT: All right.

12 MR. STOCKWELL-ALPERT: And I believe that  
13 would sum it up.

14 THE COURT: All right. So that's 1, 2, 3, 4,  
15 5, 6, 7, 8, 9, 10. But since you haven't done anything  
16 in a year and a half, I really wonder whether you're  
17 going to do anything in the next three months.

18 MR. STOCKWELL-ALPERT: No, everybody is on  
19 board now.

20 THE COURT: All right. So when do you want to  
21 take your depositions?

22 MR. STOCKWELL-ALPERT: I can take my  
23 depositions two weeks after their depositions or  
24 sometime in February. I'll clear my docket, okay, to do  
25 this. I'm serious about moving this case.



1 MR. KEEFE: The week of the 28th would be two  
2 weeks afterwards.

3 THE COURT: The week of the 28th, does that  
4 work?

5 MR. KEEFE: Yeah.

6 MS. LITSAS: That does work for me, your  
7 Honor. The only concern I have is with some of the  
8 officers and their schedules. It's very difficult to  
9 try to coordinate that. So we would just like some  
10 flexibility with that.

11 THE COURT: Well, you've got five weeks'  
12 notice. They can arrange their schedules. No, they  
13 have to do this. They have to do this.

14 MS. LITSAS: Okay.

15 THE COURT: So let's just do it.

16 MS. LITSAS: Okay.

17 THE COURT: I'm not going to let you come back  
18 and say --

19 MS. LITSAS: Oh, I understand.

20 THE COURT: All right. Well, the defendant  
21 can take up to ten depositions of the people or  
22 organizations that have been named beginning January  
23 28th. And is the week sufficient to complete them all?

24 MR. KEEFE: I think we'll wrap them up in a  
25 couple of days, your Honor.

1 THE COURT: Right. So they're to be completed  
2 by January 31st.

3 MR. STOCKWELL-ALPERT: That's only four days?

4 MS. LITSAS: You meant the plaintiffs.

5 THE COURT: I meant the plaintiffs. Did I say  
6 the defendants?

7 MS. LITSAS: Yes.

8 THE COURT: I'm sorry. All right. The  
9 defendants' depositions of the individuals named are  
10 going to be taken from January 14th to January 18th.  
11 the plaintiffs' depositions, limited to the people  
12 named, are going to be taken January 28th to 31st.

13 MR. STOCKWELL-ALPERT: That's four days. Can  
14 we have five?

15 THE COURT: Oh, yes, it is. It is. You can  
16 have until February 1st.

17 MR. STOCKWELL-ALPERT: You know, just most  
18 respectfully, Thomas Taylor is like the key witness and  
19 we may want more --

20 THE COURT: I gave it to you. Make sure you  
21 leave enough time for him.

22 All right. Then you haven't designated experts.  
23 And the plaintiff has to go first and provide the  
24 information required by the pertinent part of Rule 26.  
25 Are you going to designate an expert?

1 MR. STOCKWELL-ALPERT: Yes, we have started  
2 discussions with two different experts. We're going to  
3 have a vocational and economic expert basically to  
4 testify about what she's earned, this and that, what her  
5 skills were and so on for her life, and that would be  
6 Dana Hewins, H-E-W-I-N-S. I haven't spoken to him yet,  
7 so it's not cast in concrete.

8 THE COURT: And who is the other expert?

9 MR. STOCKWELL-ALPERT: The other would be  
10 basically the one who comes in and testifies about, you  
11 know, complaints against the City and about customs and  
12 policy --

13 THE COURT: All right. But if you're going to  
14 complete discovery in three months, you're going to have  
15 to -- because we've got to leave some time for possible  
16 expert depositions, so what about --

17 MR. STOCKWELL-ALPERT: I'm getting to --

18 THE COURT: Let me finish. Let me finish.

19 MR. STOCKWELL-ALPERT: Yes.

20 THE COURT: You're going to make Mr. Keefe  
21 think that he can get away with this, too. He's  
22 wondering when I got so patient. I can tell what's  
23 going through his head.

24 (Laughter.)

25 THE COURT: You're going to have to -- we're

1 going to issue an order, but it's Rule 26.

2 The plaintiff shall, by February 8, designate  
3 experts and disclose the information required by Federal  
4 Rule of Civil Procedure 26(a)(2) concerning each expert  
5 and then the defendant will need to do the same by March  
6 15th -- March 14th. And I'll actually give you a little  
7 more time than you asked me for, because if you want to  
8 take a deposition of any expert, the deposition shall be  
9 taken by April 11th. And then again, you're going to,  
10 by April 18, confer and file a report, each of you, both  
11 sides, file a report as to the prospects for settlement  
12 and whether either party feels there's a proper basis  
13 for filing a motion for summary judgment.

14 What's the date I just gave you for that?

15 THE CLERK: April 18th.

16 THE COURT: And I'm going to see you at 4:00  
17 on April 24th to talk about settlement and summary  
18 judgment.

19 Now, you might -- well, the defendants have  
20 already done this, so we can't really talk about summary  
21 judgment because we don't know what the evidence is  
22 since discovery is very far from complete, but, you  
23 know, they cite a bunch of cases, some of them for  
24 familiar propositions, so --

25 Have you had any discussions about whether this

1 case can be settled?

2 MR. STOCKWELL-ALPERT: It was scheduled for  
3 mediation and then the City decided that they didn't  
4 want to go through with it and that was the last  
5 discussion of mediation.

6 THE COURT: Well, that's fine.

7 MS. LITSAS: The case law and the evidence,  
8 your Honor, we're really not in a position to make that  
9 --

10 THE COURT: No, that's reasonable. The idea  
11 -- the reason I tell you to discuss settlement at the  
12 end of discovery is that you know what the evidence is.  
13 But the next time you really need to do this. You're  
14 going to be spending some time together so, you know,  
15 see what you can do. Somebody is dead. Maybe it's just  
16 unfortunate, but on the other hand -- you know, just  
17 see.

18 But then if I authorize motions for summary  
19 judgment -- and I'll change this, but if there are, you  
20 know, just disputed facts, then when do I have them  
21 coming in? April 24th?

22 THE CLERK: Yeah.

23 THE COURT: We'll have a pretrial conference  
24 May 15th and we'll go to trial on May 27th.

25 MR. STOCKWELL-ALPERT: May I ask one thing?

1 THE COURT: Sure.

2 MR. STOCKWELL-ALPERT: Could we roll back that  
3 4:00 to 3:00? I have significant transportation issues.

4 THE COURT: Okay. What day?

5 THE CLERK: The 24th.

6 THE COURT: Okay. Okay.

7 MR. STOCKWELL-ALPERT: I would really  
8 appreciate that.

9 THE COURT: Okay. All right. Mr. O'Leary  
10 will have to remind me to put that at 3:00.

11 MS. LITSAS: Your Honor, I'm a little confused  
12 on the -- if you authorize summary judgment motions --

13 THE COURT: Then I'm going to change the  
14 pretrial conference and the trial dates.

15 MS. LITSAS: Okay. So we're not preparing  
16 summary judgment motions and trial at the same time?

17 THE COURT: No. No. But if it turns out that  
18 you look at it and you see there are disputed material  
19 facts and that this case is going to have to be tried,  
20 then that's the schedule it will be tried on.

21 MS. LITSAS: Okay.

22 THE COURT: If you come and tell me again  
23 "We'd like to move for summary judgment," and do just  
24 what you did this time, you know, give me a feel for it  
25 so I see there's a colorable basis, then I'll say,

1 "Okay, you can file for summary judgment. We're not  
2 going to trial at the end of May. Here's the schedule  
3 for summary judgment."

4 MS. LITSAS: Okay. And I'll make sure I'll  
5 single space it this time.

6 THE COURT: Okay.

7 MR. McCAULL: Your Honor, any chance we can go  
8 to the first week of June for trial?

9 THE COURT: Not as of now.

10 MS. LITSAS: The other outstanding motions,  
11 your Honor --

12 THE COURT: Oh, yeah, the CORI motion.

13 MS. LITSAS: The CORI motion, yes.

14 THE COURT: Yeah, there's no objection to  
15 that. That's allowed, too. With regard to people who  
16 are going to be witnesses, it bears on their  
17 credibility. I think you also asked for the decedent's  
18 CORI and I assume that's relevant to damages  
19 potentially, right?

20 MS. LITSAS: Yes.

21 THE COURT: Okay. We'll enter an order. You  
22 can have all of that.

23 MS. LITSAS: I have a proposed order.

24 THE COURT: Oh, you have a proposed order?  
25 Okay.

1 (Hands over.)

2 THE COURT: Is it in there?

3 MS. LITSAS: Yup, right here, your Honor.  
4 Sorry. It's not stapled.

5 THE COURT: That's all right.

6 (Signs.)

7 THE COURT: Let's see. You also -- just so  
8 you can get going, because your time is short, you have  
9 the motion to take the deposition and that's allowed.  
10 (Signs.)

11 All right. Are those all the motions?

12 MS. LITSAS: Yes, your Honor. Just two other  
13 points. We have yet to receive written discovery from  
14 the plaintiff, their answers to interrogatories and  
15 document production. If --

16 THE COURT: You need it for the --

17 MS. LITSAS: If there's information that is  
18 new or --

19 THE COURT: You need it for the depositions?

20 MS. LITSAS: That's right.

21 MR. STOCKWELL-ALPERT: Two weeks, they'll have  
22 it.

23 THE COURT: Yes. If they don't have it, I may  
24 dismiss the case.

25 MR. STOCKWELL-ALPERT: Three weeks.



1 THE COURT: No, not three weeks. They've got  
2 a deposition January 14th. They want to read it.

3 MR. STOCKWELL-ALPERT: Right.

4 MS. LITSAS: And, your Honor, we would just  
5 reserve the right to call in to -- if we need to add  
6 other witnesses to our deposition list, I'll just file a  
7 motion.

8 THE COURT: You'll have to file a motion. You  
9 have a right to file a motion. You don't have a right  
10 to add people. But that's fine.

11 You're to -- we'll say by January 3rd, I'm  
12 ordering -- what do you have, interrogatories?

13 MS. LITSAS: Interrogatories and requests for  
14 production of documents.

15 THE COURT: All right. The plaintiff is to  
16 respond to the pending interrogatories and pending  
17 request for production of documents by January 3, 2008  
18 and it needs to be everything.

19 MS. LITSAS: The underlying probate case  
20 involving the decedent's estate, apparently we've just  
21 learned that the material is impounded in the probate  
22 court, so we do not have access to it. What are your  
23 recommendations as far as accessing that material,  
24 should we seek an order from you or --

25 THE COURT: Well, let me ask you this.

1 MS. LITSAS: He's refused to provide that  
2 information to us.

3 MR. STOCKWELL-ALPERT: I didn't refuse. What  
4 I said was that I'm not going to have the executor or  
5 the administrator of the estate go to court and try to  
6 unimpound these documents without them coming in and  
7 making some sort of showing that the probate court  
8 documents, which have been impounded for particular  
9 reasons, are relevant to anything.

10 THE COURT: What's in the probate court  
11 documents, potentially?

12 MS. LITSAS: Apparently there's information  
13 regarding some of the witnesses that may be testifying,  
14 Mr. Carlos Cepeda. There's information that has been  
15 discussed because there was a child custody dispute or a  
16 guardianship dispute over the grandmother of the -- or  
17 the mother of the decedent, who is the grandmother, and  
18 the father of the child. Apparently --

19 THE COURT: What's the relevance?

20 MS. LITSAS: The relevance is because it goes  
21 to damages and Domingas DePina is going to be a witness  
22 who is going to testify at the trial on behalf of the  
23 decedent. She's going to talk about her daughter.  
24 She's going to talk about her grandchild. And all of  
25 that information has been --

1 THE COURT: Well, who provided the information  
2 to the probate court?

3 MS. LITSAS: Domingas DePina.

4 THE COURT: Fine. You can get it from  
5 Domingas DePina. Why do you have to get it from the  
6 court?

7 MS. LITSAS: Because the court --

8 THE COURT: The fact that it's impounded in  
9 the court record doesn't mean that Mr. DePina can't give  
10 it to you. Who represents Mr. DePina?

11 MS. LITSAS: No one. I just learned the other  
12 day at her deposition that Mr. Stockwell-Alpert is not  
13 representing her.

14 MR. STOCKWELL-ALPERT: I never have  
15 represented her.

16 THE COURT: Oh, DePina is a female.

17 MR. STOCKWELL-ALPERT: Right.

18 THE COURT: Well, my point is as follows. I  
19 think if you want to discover something that's in the  
20 probate records -- and I don't know who the parties of  
21 the probate dispute, you know, the probate matter, are,  
22 you'll have to go to the probate court to unseal them.

23 MS. LITSAS: Okay.

24 THE COURT: But the fact that something is  
25 sealed at the probate court doesn't mean that you can't

1 obtain the same information from whoever gave it to the  
2 probate court.

3 MS. LITSAS: I understand that, your Honor.

4 THE COURT: So, you know, in connection with  
5 the subpoena to Mr. -- Miss DePina for the deposition,  
6 ask for copies of everything that DePina provided to the  
7 probate court. That's one way to get it. And then I  
8 don't know who else provided information to the probate  
9 court.

10 MS. LITSAS: Certainly any testimony that --

11 THE COURT: Or you can go into probate court  
12 and move to have it unsealed subject to some protective  
13 order. But I don't, A, have a motion before me with a  
14 memorandum. I have questions about my authority to  
15 essentially unseal, for limited purposes, records in  
16 another court.

17 MS. LITSAS: I understand, your Honor.

18 THE COURT: And if I have the authority, I  
19 have questions about the propriety of doing it.

20 MS. LITSAS: Okay.

21 THE COURT: Now --

22 MR. STOCKWELL-ALPERT: I have an issue about  
23 that, too, as well.

24 THE COURT: And what is that?

25 MR. STOCKWELL-ALPERT: And that is that Miss

1 DePina was the guardian of the child after a long and  
2 protracted battle and she's not the administrator, and  
3 -- she had an attorney representing her and Carlos  
4 Cepeda had these attorneys representing him. It would  
5 seem to me that if, in fact, anything was directed to  
6 anybody, it would have to be directed to Domingas  
7 DePina's attorney who represented her in the probate  
8 court who can make the decision, because Domingas DePina  
9 gave nothing to anybody. She was represented by a  
10 lawyer who filed all the papers and the relevant  
11 documents and things like that in court. So Domingas  
12 DePina has nothing to give with respect to anything.  
13 And I would suggest that you have to go to the attorney  
14 for Domingas DePina.

15 THE COURT: You mean take the attorney's  
16 deposition?

17 MR. STOCKWELL-ALPERT: No, go to the attorney  
18 and see if the attorney would go along with unsealing  
19 the record or anything. He's got the standing to come  
20 in and object to it.

21 THE COURT: No, I think that he's the  
22 witness's agent and anything that you give to an  
23 attorney, that it is in the custody and control of the  
24 client.

25 MR. STOCKWELL-ALPERT: So if you're talking

1 about specifically documents and things that she  
2 provided him with, that's one thing. If you're trying  
3 to get at anything else, there might be work product or  
4 anything else in the probate court, that's another  
5 matter. And she can certainly inquire of Domingas as to  
6 what if any documents did she actually give.

7 THE COURT: She wants to get the documents  
8 before the deposition, I assume.

9 MS. LITSAS: And certainly any testimony that  
10 was provided in the proceeding that is directly relevant  
11 at least for -- well, not just for damages purposes, but  
12 also for impeachment purposes.

13 THE COURT: Well, you may need to go to the  
14 court for that. I don't know whether the transcripts  
15 have been made.

16 MS. LITSAS: Yes. Thank you.

17 THE COURT: But anything in an attorney's  
18 possession on behalf of a client is within the client's  
19 custody and control. It's not immunized from production  
20 because the attorney's holding it. And if there's some  
21 work product privilege, then that's something else.

22 MR. STOCKWELL-ALPERT: Well, I guess, your  
23 Honor -- and just to not belabor this, but quickly, that  
24 if she didn't give him any documents to file and the  
25 administrator of the estate has no documents prepared by

1 her --

2 THE COURT: You want to listen to this.

3 MS. LITSAS: Excuse me.

4 THE COURT: Go ahead.

5 MR. STOCKWELL-ALPERT: If she hasn't given any  
6 documents to her lawyer and the lawyer simply went ahead  
7 and prepared an administration of the estate and an  
8 administrator was appointed, then there's no connection  
9 between her and anything that you're trying to  
10 discover. And it seems that the issue can be simply  
11 resolved by making an inquiry as to what if any  
12 documents that she provided to her lawyer to the probate  
13 court, because everything else is sealed.

14 THE COURT: I don't have a motion in front of  
15 me, but I'm telling you that the fact that something's  
16 under seal in court doesn't mean it's not discoverable.  
17 Somebody might move to quash the subpoena and say, "No,  
18 there's a proper basis. It's attorney-client privilege,  
19 it's work product." But the fact that it's sealed in  
20 court doesn't mean that it can't be -- doesn't  
21 automatically mean it can't be produced by the client or  
22 her agent.

23 So if you have to come back to me on any of this,  
24 that's the understanding I'm going to start with and  
25 you'll have to give me some authority for some different

1 proposition.

2 All right. Now, the past cannot be prologue. I  
3 very rarely conduct a scheduling conference with the  
4 court reporter present, but he's present. He's going to  
5 put this on my laptop so that I can pull up the draft  
6 even if you don't order it. And, you know, to the  
7 extent that the plaintiff has any influence over the  
8 people that the defendants want to depose, you should  
9 exert that influence to cause them to come. Because if  
10 they don't give their depositions, the plaintiff is  
11 certainly not going to be permitted to call them at  
12 trial or at least they're going to say there's a  
13 prejudice, they shouldn't be allowed to testify at  
14 trial.

15 Similarly, you know, I know these are police  
16 officers, but now they've got six weeks' notice. You  
17 can go out and sit in my conference room, decide what  
18 dates you prefer for each of the police officers, and  
19 put the time aside. But they have to do it.

20 MS. LITSAS: Absolutely, your Honor.  
21 Absolutely.

22 MR. STOCKWELL-ALPERT: Judge, we have not done  
23 anything to interfere with them trying to get any  
24 witness -- we're not calling any of these people and  
25 some of them have Fifth Amendment issues. And I don't



1 think we have any obligation --

2 THE COURT: No, no, that's fine. I was  
3 thinking about people you might be calling. No, you  
4 don't have an obligation to cause other witnesses to  
5 appear. On the other hand, I'm going to issue an order  
6 if they haven't -- just for the people who have failed  
7 to obey notices of deposition, so you'll have to  
8 describe that to me, to appear. If they fail to appear  
9 and there's a motion to hold them in contempt, I'll have  
10 to send the marshals out to get them.

11 MR. STOCKWELL-ALPERT: So be it.

12 THE COURT: They have other things to do.

13 MR. STOCKWELL-ALPERT: Well, I don't want you  
14 to have to do that either, but --

15 THE COURT: No, I'm not saying I do, I'm  
16 saying the marshals have other things to do. No, I can  
17 send them out. It's not a great effort on my part. And  
18 then the marshals will take them and they'll lock them  
19 up until they give their deposition. I'll hold them in  
20 civil contempt. But, you know, unless they like being  
21 locked up, they should come for their deposition.

22 MS. LITSAS: Thank you, your Honor. We're  
23 trying to be as -- we understand that a couple of these  
24 witnesses had family emergencies or some type of  
25 situations, but other witnesses have just failed to

1 appear. That's why we held off on that motion to compel  
2 to give people in certain circumstances --

3 THE COURT: Well, I'm afraid their lives are  
4 not going to get any less chaotic, so this is the time.  
5 And, you know, it's a serious thing, you know, because  
6 somebody's killed and it's a serious thing because there  
7 are serious allegations against the defendants, and so  
8 it's got to be taken seriously and done properly.

9 MS. LITSAS: I agree, your Honor.

10 THE COURT: All right. Now you've got a  
11 schedule. More?

12 MS. LITSAS: I just wanted to put you on  
13 notice of the -- of Shenia Dancy-Stewart, she's the  
14 administrator of the estate. Mr. Stockwell-Alpert did  
15 give me the opportunity to speak with her informally. I  
16 haven't yet had the opportunity. But if for some reason  
17 I don't have that -- if she's not cooperative or refuses  
18 to talk with me, I would like the opportunity to reserve  
19 my right to depose her, since she is the administrator.

20 THE COURT: Well, at this point you don't have  
21 the right, you have to ask me, because I asked you to  
22 tell me everybody you've been trying to depose since  
23 August of 2006 and you told me. So the people you told  
24 me, you have a right to depose, that week of January  
25 14th, but anybody else you're going to have to persuade

1 me should be added. Okay?

2 MS. LITSAS: Will do. Thank you, your Honor.

3 MR. STOCKWELL-ALPERT: Thank you, Judge.

4 MR. McCAULL: Thank you, very much.

5 MS. LITSAS: Thank you for your time.

6 (Ends, 2:00 p.m.)

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C E R T I F I C A T E

I, RICHARD H. ROMANOW, OFFICIAL COURT REPORTER,  
do hereby certify that the foregoing record is a true  
and accurate transcription of my stenographic notes  
before Chief Judge Mark L. Wolf, on December 19, 2007,  
to the best of my skill and ability.

/s/ Richard H. Romanow

\_\_\_\_\_  
RICHARD H. ROMANOW